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Jeff Chin

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SCHWEGMAN, LUNDBERG & WOESSNER/EBAY

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MINNEAPOLIS, MN 55402

EXAMINER

COLBERT, ELLA

ART UNIT

PAPER NUMBER

3696

NOTIFICATION DATE

DELIVERY MODE

05/27/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/685,449	<b>Applicant(s)</b> CHIN ET AL.	
	<b>Examiner</b> Ella Colbert	<b>Art Unit</b> 3696	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 17, 29-33 and 35-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 17, 29-33 and 35-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/04/03, 03/11/09</u> .                                      | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-11, 17, 29-33, and 35-46 are pending. Claims 12-16 have been cancelled in response to the Election/Restriction requirement filed without traverse on 08/13/08. Applicants' election without traverse of claims 1-11, 17, 29-33 and 35-46 in the response filed 08/13/08 is acknowledged.

Group I, claims 1-11, 17, 29-33, and 35-46 were elected for prosecution on the merits and claims 12-15 have been cancelled without prejudice.

Claims 12-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. There being no allowable generic or linking claim. Election was made without traverse in the reply filed on 08/13/08.

Claims 1-11, 17, 29-33, and 35-46 have been elected for further prosecution as set forth here below.

2. The IDS filed 03/04/03 and 03/11/09 has been reviewed and entered.

### ***Claim Objections***

Claims 2-11, 29-33, and 35-46 is objected to because of the following informalities: Claim 46 recites "price schedule includes displaying the plurality of choices a series of displayed price values each". This claim should recite "price schedule includes displaying the plurality of choices as a series of displayed price values each". Claim 8 recites "... the user is contingent on the receipt of contact information in a step of receiving contact information for the user, but wherein". This claim limitation is redundant. It is suggested to write the claim limitation as follows: "...

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the user is contingent upon the receipt of contact information, wherein". Appropriate correction is required.

Claims 2-11, 29-33, and 35-46 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Fig. 2, element 50 and Fig. 7, element "120". Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the

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description: Fig. 8, "system 10". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12, 17, 29-33, and 35-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The following are not found according to the specification on page 2, "A variable price schedule for the item is communicated to the user, and a reminder command associated with an entry", and the reminder command including a price selection for the item. The user is then notified when the entry in the schedule is reached. In ..., the entry can be a price entry and the step of notifying the

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user when the price entry is reached. The claim limitations of the independent claims recite a method comprising: presenting, via a first network, item information associated with an item on a sales screen to a user; communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item; receiving a reminder command associated with a selection of an entry in the variable price schedule from the user, the reminder command including a price selection from the plurality of the price selections for the item; and notifying the user when the entry in the variable price schedule is reached.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, recites "... a selection of an entry in the variable price schedule from the user, ...;". There is not any process of the user selecting anything. Is the entry a selected price for the item? The claim limitations do not say selectable or the user selects anything.

Also, the last claim limitation recites "notifying the user when the entry in the variable price schedule is reached". It is unclear from the claim limitation how the user is notified and the variable price schedule for what is reached because the user has not selected anything in order to be notified and for a variable price schedule to be reached.

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It is unclear and indefinite how the item being communicated? Is the item being communicated by a computer or by a human being? It is vague and indefinite who or what is receiving the reminder command. Is the network receiving the reminder command or is a user receiving the reminder command?

It is vague and indefinite how the variable price schedule changes over time or changes dynamically?

It is further vague and indefinite as to what the difference is in a price selection and an entry?

Applicants' have a first network and this indicates that there should be a second network for performing the steps of claim 1.

Claim 7 recites "... the user signal acceptance ...". It is vague and indefinite how the user signals acceptance by using dial keys for a telephone. Does the user dial the phone number and state acceptance of the purchase request?

Claim 17 has a similar problem.

Claim 17 also recites means plus function language. It cannot be determined whether Applicants' are invoking 112 (6) paragraph or not according to the structure of the claim.

Claims 6 and 7 are vague and indefinite what Applicants' mean by "presenting a purchase acceptance control to the user". Do Applicants' mean "presenting a purchase acceptance control button to the user"?

Claims 2-11, 29-33, and 35-46 are also rejected because of their dependency from a rejected base claim.

"An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...". *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent a method claim must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). A method claim that fails to meet one of the above requirements is not in compliance with the statutory



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requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims 1-11 fail to meet the above requirements since there is not a sufficient tie to another statutory class.

The claims fail the test of being tied to a particular apparatus because the first network is an extra solution activity.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 17, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by (US 6,434,536) Geiger.

Claim 1. Geiger discloses, A networked sales method, comprising:  
presenting, via a first network, item information associated with an item on a sales screen to a user (col. 2, lines 28-52 and Fig. 2); communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item (col. 2, lines 40-52, Fig. 3 and Fig. 5); receiving a reminder command associated with a selection of an entry in the variable price schedule from the user, the reminder command including a price selection from the plurality of the price selections for the item (col. 4, lines 29-46 and Fig. 3); and notifying the user when the entry in the variable price schedule is reached (col. 6, lines 29-36).

Claim 2. Geiger discloses, The method of claim 1 wherein the entry is a price entry and wherein the notifying notifies the user when the price entry is reached (col. 4, lines 36-46).

Claim 17. Geiger discloses, A networked sales system, comprising:  
means for presenting via a first network item information associated with an item on a

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sales screen to a user (col. 2, lines 28-52 and Fig. 2); means for communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item (col. 2, line 40-52, Fig. 3 and Fig. 5); means for receiving a reminder command associated with a selection of an entry in the variable price schedule from the user, the reminder command including a price selection from the plurality of price selections for the item (col. 4, lines 29-46 and Fig. 3); and means for notifying the user when the entry in the variable price schedule is reached (col. 6, lines 29-36).

Claim 29. Geiger discloses, The method of claim 1, wherein the presenting of the item information includes: displaying an item identifier for an item on a sales screen (Fig. 2 and Fig. 3), and displaying a price box for the item on the sales screen (col. 2, lines 28-52).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,434,536) Geiger in view of (US 5,664,111) Nahan et al, hereafter Nahan.

Claim 3. Geiger failed to disclose, The method of claim 1 wherein the entry is a date entry and wherein the notifying notifies the user when the date entry is reached. Nahan

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discloses, wherein the entry is a date entry and wherein the notifying notifies the user when the date entry is reached (col. 11, lines 1-10 and lines 37-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have a system for the purchase and sale of products such as antiques, jewelry, oriental rugs, numismatics, philately, and others.

Claim 4. Geiger failed to disclose, The method of claim 1 wherein the notifying of the user includes notifying the user through a second network with a near-real-time alerting mechanism. Nahan discloses, wherein the notifying of the user includes notifying the user through a second network with a near-real-time alerting mechanism (col. 2, lines 38-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to process documents to effect and settle the resulting transaction over a high speed communications network on a dynamic, real time basis.

Claim 5. Geiger discloses, The method of claim 1 wherein notifying of the user includes notifying the user through a wireless network (col. 6, lines 17-27)..

Claim 6. Geiger discloses, The method of claim 1 wherein the notifying includes presenting a purchase acceptance control to the user (col. 6, lines 41-65).

Claim 7. Geiger discloses, The method of claim 6 wherein the notifying notifies the user through a telephone network and wherein the presenting of the purchase acceptance control requests that the user signal acceptance using dial keys for a telephone connected to the telephone network (col. 6, lines 17-27).

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Claim 8. Geiger and Nahan feiled to disclose, The method of claim 1 wherein acceptance of the reminder command in the receiving of a reminder command from the user is contingent on the receipt of contact information in a step of receiving contact information for the user, but wherein the presenting of the item is independent of the receipt of any contact information from the user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an acceptance of the reminder command in the receiving of a reminder command from the user is contingent on the receipt of contact information in a step of receiving contact information for the user, but wherein the presenting of the item is independent of the receipt of any contact information from the user and to modify in Geiger because such a modification would allow Nahan to have a button to press for a reminder command.

Claim 9. Geiger discloses, The method of claim 1 wherein the receiving of the reminder command is responsive to only a single click on a reminder control (col. 5, lines 53-65).

Claim 10, 11, 30-33, and 35-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,434,536) Geiger in view of (US 5,664,111) Nahan et al, hereafter Nahan and further in view of (US 5,890,138) Godin.

Claim 10. Geiger and Nahan failed to disclose, The method of claim 1 wherein the presenting of the item information includes presenting the plurality of price selections for the item including a plurality of time-separated price choices from a falling-price schedule. Godin discloses, wherein the presenting of the item information includes presenting the plurality of price selections for the item including a plurality of time-

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separated price choices from a falling-price schedule (col. 6, lines 50-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have an auction process that is fast and changes quickly involving users bidding for a particular product and the product being sold to the highest bidder.

Claim 11. Geiger and Nahan failed to disclose, The method of claim 1 wherein the presenting of the item information includes presenting the plurality of price selections for the item including a present price and at least one future price, and further including displaying a present purchase control button next to the present price and a future purchase control button next to the future price. Godin discloses, wherein the presenting of the item information includes presenting the plurality of price selections for the item including a present price and at least one future price, and further including displaying a present purchase control button next to the present price and a future purchase control button next to the future price (col. 3, lines 48-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have an auction process that is fast and changes quickly involving users bidding for a particular product and the product being sold to the highest bidder.

Claim 30. Geiger failed to disclose, The method of claim 29 wherein the displaying of the item identifier includes displaying an image of the item on the sales screen and wherein the displaying of the price box displays the price box proximate the image of the item. Nahan discloses, wherein the displaying of the item identifier includes

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displaying an image of the item on the sales screen and wherein the displaying of the price box displays the price box proximate the image of the item (col. 8, line 1-col. 9, line 60 and Fig. 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have computer software that performs certain functions and is geared to the management of a particular inventory for the purpose of buying and selling products.

Claim 31. Geiger failed to disclose, The method of claim 29 wherein the displaying of the item identifier includes displaying an image on the sales screen and wherein the displaying of the price box displays the price box to overlap the image of the item.

Nahan discloses, wherein the displaying of the item identifier includes displaying an image on the sales screen and wherein the displaying of the price box displays the price box to overlap the image of the item (col. 8-Table 1-col. 10, Table 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have a display on the view monitor of a product for sale in display format.

Claim 32. Geiger failed to disclose, The method of claim 29 wherein the displaying of the plurality of price choices displays the plurality of choices as a series of user price selection controls. Nahan discloses, wherein the displaying of the plurality of price choices displays the plurality of choices as a series of user price selection controls (col. 11, line 60-col. 12, line 35). It would have been obvious to one having ordinary skill in

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the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to determine the number of images to be displayed and if a previous page is to be displayed the display routine is immediately invoked then the next page with the full number of images is displayed.

Claim 33. Geiger, Nahan, and Godin failed to disclose, The method of claim 1 wherein the communicating of the variable price schedule to the user includes displaying at least one of the user price selection controls as a control that is responsive to a single actuation to place a bid on the item. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate in Geiger because such an incorporation would allow Geiger to press a "place bid" button to send the bid to the electronic auction system for processing.

Claim 35. Geiger failed to disclose, The method of claim 29 wherein the price box has one curved edge. Nahan discloses, wherein the price box has one curved edge (See Fig. 7 (176)). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have a display price in a circular box which has a curved edge.

Claim 36. Geiger failed to disclose, The method of claim 29 wherein the price box has a circular marking near one of its edges. Nahan discloses, the price box has a circular marking near one of its edges (col. 13, lines 3-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to

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have a display price in a circular box which has a curved edge.

Claim 37. Geiger discloses, The method of claim 29 further including displaying price boxes for different items and further displaying price choices for those items on the same screen (col. 4, lines 29-67)..

Claim 38. Geiger and Nahan failed to disclose, The method of claim 37 further including displaying an image for each of the items on the sales screen. Godin discloses, including displaying an image for each of the items on the sales screen (col. 5, line 41-col. 6, line 36 and fig. 9-shows two items (one item for now and one item which is next on the block). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have the screen show the product that is being auctioned with the price and information and the next item to go on the block to be auctioned.

Claim 39. Geiger and Nahan failed to disclose, The method of claim 29 further including the displaying further price information for the item in response to user interaction with the price box. Godin discloses, including the displaying further price information for the item in response to user interaction with the price box (col. 6, lines 1-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have the screen show the product that is being auctioned with the price and information.

Claim 40. Geiger discloses, The method of claim 39 wherein the displaying further price



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information displays the information in a window that overlays an area of the screen in which the price box and the item identifier are displayed (col. 2, line 28-col. 3, line 52).

Claim 41. Geiger discloses, The method of claim 39 wherein the displaying is responsive to the user locating a pointing device cursor above a screen area associated with the item (Fig. 9-shows where a pointing device cursor can be placed above a screen in the area associated with the item).

Claim 42. Geiger and Nahan failed to disclose, The method of claim 29 wherein the price box further includes an accessorize button that is responsive to user input to retrieve information about items available that complement the item for which the price box is displayed. Godin discloses, wherein the price box further includes an accessorize button that is responsive to user input to retrieve information about items available that complement the item for which the price box is displayed (Fig. 10-Shows a price box that includes a button that can be used to accessorize and to retrieve information about the items). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have the screen show the product that is being auctioned with the price and an information button.

Claim 43. Geiger, Nahan, and Godin failed to disclose, The method of claim 1 wherein the communicating of the variable price schedule includes displaying a present price and a present purchase control button next to it. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate in Geiger because such an incorporation would allow Geiger to have the screen show the

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product that is being auctioned with the price and an information and a purchase control button. The recitation the present price and a present purchase control button constitutes a statement of intended use. As such, the recitation is not afforded patentable weight. The intended use of a button is not functionally related to the structure of the method as claimed. The structure of the method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

Claim 44. This dependent claim is rejected for the similar rationale as given above of dependent claim 43. The recitation the future price and a future purchase control button constitutes a statement of intended use. As such, the recitation is not afforded patentable weight. The intended use of a button is not functionally related to the structure of the method as claimed. The structure of the method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

Claim 45. This dependent claim is rejected for the similar rationale as given above for claims 43 and 44. The recitation the present purchase control button and a future purchase control button constitutes a statement of intended use. As such, the recitation is not afforded patentable weight. The intended use of a button is not functionally

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related to the structure of the method as claimed. The structure of the method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

Claim 46. Geiger discloses, The method of claim 1 wherein the communicating of the variable price schedule includes displaying the plurality of choices a series of displayed price values each located proximate one of a plurality of purchase control buttons (See Fig. 2-the screen with the control buttons of BUY IT and SELL IT). The recitation the purchase control buttons constitutes a statement of intended use. As such, the recitation is not afforded patentable weight. The intended use of a button is not functionally related to the structure of the method as claimed. The structure of the method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

### **Remarks**

REMARKS: It is suggested that claims 4, 5, and 29 be incorporated into claims 1 and 17 in an effort to move the application forward.

### **Inquiries**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741.

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The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dixon Thomas can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/  
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